

APPEAL NO. 93038

This appeal arises under the Texas Workers' Compensation Act of 1989 (1989 Act), TEX. REV. CIV. STAT. ANN. arts 8308-1.01 *et seq.* (Vernon Supp. 1993). On November 30, 1992, a contested case hearing was held in (city), Texas, with (hearing officer) presiding. She determined that appellant, claimant herein, failed to show by a preponderance of the evidence that he injured his right knee on (date of injury) while in the course and scope of his employment with (employer). Claimant alleges he injured his knee on a pipe rack trying to avoid some wasps. The claimant's version is disputed by a coworker and friend who testified that when he and claimant left the employer's premises on the day in question, the claimant did not appear injured and that claimant told him the next day that he had hurt his knee the night before chasing a raccoon. The claimant denied this conversation but the hearing officer found against the claimant based on the witness' testimony. The claimant by letter dated January 8, 1992, appealed asking us to review the decision of the hearing officer. Respondent, carrier herein, filed a response alleging, among other matters, that claimant's appeal was untimely filed.

DECISION

Finding that the appeal in this matter was not timely made, the decision of the hearing officer is the final administrative decision in this case. See Article 8308-6.34(h) of the 1989 Act.

The decision of the hearing officer was distributed, by mail, on December 16, 1992. Claimant in his appeal does not assert when the decision was received, therefore the provisions of Commission Rule 102.5(h) (Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 102.5(h)) are invoked. Rule 102.5(h) provides:

(h)For purposes of determining the date of receipt for those notices and other written communications which require action by a date specific after receipt, the commission shall deem the received date to be five days after the date mailed.

In that the decision was mailed on December 16, 1991, the "deemed" date of receipt is December 21, 1992. Article 8308-6.41(a) requires that an appeal shall be filed with the Appeals Panel "not later than the 15th day after the date on which the decision of the hearing officer is received. . . ." If the deemed receipt date is December 21, 1992, 15 days from that date would be Tuesday, January 5, 1993, which would be the statutory date by which an appeal must be filed. Claimant's appeal was dated January 8, 1993. The postmark, although difficult to read, also appears to be January 8, 1993. The appeal was actually received by the Texas Workers' Compensation Commission's central office in Austin on January 13, 1992. Consequently, the appeal was filed beyond the statutory 15 days accorded in Article 8308-6.41(a), even if the January 8, 1993 date of mailing is used.

Article 8308-6.34(h) states the decision of the hearing officer is final in the absence

of a timely appeal. Determining the appeal was not timely filed, as set forth above, we have no jurisdiction to review the hearing officer's decision.

The decision of the hearing officer is final.

Thomas A. Knapp
Appeals Judge

CONCUR:

Stark O. Sanders, Jr.
Chief Appeals Judge

Susan M. Kelley
Appeals Judge